

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re  
JULIO LINDO and REYNA LINDO

Case No. 05-14184-A-13K  
DC Nos. MNE-1; MNE-3

Debtor.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REGARDING  
TRUSTEE'S MOTION TO DISMISS

On January 26, 2006, a hearing was held on the debtors' motion to confirm their amended chapter 13 plan and on the motion of the chapter 13 trustee to dismiss the case. At the hearing, the court denied the motion to confirm without prejudice, because the debtors had failed to file a separate proof of service. The court took under submission the motion to dismiss. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (O).

The Debtors filed their chapter 13 case on May 23, 2005. On the same date, they filed their original chapter 13 plan. Creditors Lupe Castro Navarro and Nellie E. Navarro (the "Navarros") moved for relief from stay immediately. A hearing on their motion for relief from stay was held initially on June 23, 2005, and then continued to July 27, 2005, to be heard with the initial plan confirmation hearing.

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1 Both the chapter 13 trustee and the Navarros objected to  
2 confirmation of the debtors' original plan. The basis of the  
3 trustee's objection was that the debtors had failed to utilize  
4 projected disposable income, the plan was not feasible, and real  
5 property taxes had not been provided for in the plan. The basis  
6 of the objection by the Navarros was that the plan was not  
7 feasible, the debtors had not provided for property insurance,  
8 and the plan did not provide for payment of delinquent real  
9 property taxes.

10 In 2002, the debtors had purchased two separate real  
11 properties from the Navarros, each pursuant to a written contract  
12 of sale. The debtors defaulted under each of the land sale  
13 contracts, and the Navarros obtained a stipulated judgment in  
14 Kern County Superior Court. That stipulated judgment requires  
15 the debtors to pay off all balances due and owing on both land  
16 sale contracts by March 13, 2005.

17 On July 27, 2005, the court granted relief from stay to the  
18 Navarros effective August 26, 2005, unless the debtors confirmed  
19 a plan by August 25, 2005. Also on July 27, 2005, the court  
20 sustained the trustee's objection to confirmation and continued,  
21 conditionally, the trustee's motion to dismiss. The court also  
22 sustained the objection to confirmation by the Navarros.

23 The debtors filed an amended chapter 13 plan on August 5,  
24 2005. However, they failed to notice a hearing on plan  
25 confirmation. The trustee's third motion to dismiss the case was  
26 set for hearing November 17, 2005. Apparently in response  
27 thereto, the debtors filed a motion to confirm their amended  
28 chapter 13 plan on November 16, 2005, setting it for hearing

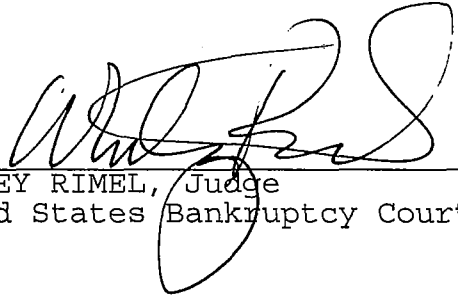
1 January 25, 2006. At the November 17<sup>th</sup> hearing on the trustee's  
2 motion to dismiss, the court continued the motion to January 26,  
3 2006 as a final hearing to be heard with the debtors' motion to  
4 confirm a modified plan.

5 The trustee once again objected to plan confirmation as well  
6 as maintaining his motion to dismiss. The trustee observed that  
7 the blanks regarding payment to unsecured creditors in the plan  
8 were not filled in and therefore the plan must be construed as a  
9 plan requiring 100% payment to unsecured creditors. The trustee  
10 also pointed out that the arrearage owed to the Navarros made the  
11 plan nonfeasible. The debtors had failed to object to the  
12 Navarros' claim, which asserted an amount due of over \$220,000.

13 Bankruptcy Code § 1307 provides for dismissal or conversion  
14 of a chapter 13 case. Section 1307(c) sets forth nonexclusive  
15 grounds to dismiss a case. Those grounds include unreasonable  
16 delay by the debtor that is prejudicial to creditors and denial  
17 of confirmation of a plan. This case was filed in May 2005.  
18 Despite being given numerous opportunities to confirm a plan, the  
19 debtors have failed to do so. Based on the Navarros' proof of  
20 claim, there is no possibility of a confirmable plan in a  
21 reasonable period of time.

22 For all the foregoing reasons, the court finds and concludes  
23 the case should be dismissed. The chapter 13 trustee shall  
24 submit an appropriate form of order dismissing the case.

25 DATED: March 6, 2006.

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WHITNEY RIMEL, Judge  
United States Bankruptcy Court

## PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF FRESNO )

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within above-entitled action; my business address is 2656 U.S. Courthouse, 1130 O Street, Fresno, California, 93721. On 3/6/06, I served the within document on the interested parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Fresno, California, addressed as follows:

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I certify (or declare), under penalty of perjury, that the foregoing is true and correct. Executed on 3/6/06, at Fresno, California.

Kathy Torres  
Kathy Torres, PLS